

Exhibit 1

1 UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF NEW YORK
3 - - - - - x

4 State Farm Mutual Automobile Insurance
5 Company and State Farm Fire and
6 Casualty Company,

Plaintiffs,

- against -

Case No.
1:17-cv-5845

7 21st Century Pharmacy, Inc.,
8 Albert Alishayev,
9 Iris Itskhakov a/k/a Istam Itskhakov,
10 Peter Khaim a/k/a Peter Khaimov a/k/a
11 Petr Khaimov,
12 Tariel Begiyev,
13 Express Billing & Collection Inc.,
14 Anturio Marketing, Inc.,
15 Logic Consulting, Inc.,
16 P&K Marketing Services Inc.,
17 A&P Holding Group Corp.
18 New Business Resources Group Inc.,
19 K&L Consultants Inc.,
20 New Business Funding Inc.,
21 TBM Solution Inc.,
22 TAR Group Inc.,
23 Personal Tech Inc.,
24 Timothy Morley, D.O.,
25 Azu A. Ajudua, M.D.,
Vincentiu Popa, M.D., and
Jo-Ann Shakarjian, M.D.,

Defendants.

- - - - - x

September 12, 2019
10:37 a.m.

575 Madison Avenue
New York, New York
30(b)(6) VIDEO-RECORDED DEPOSITION of
21st CENTURY PHARMACY, INC. by
ALBERT ALISHAYEV

A P P E A R A N C E S :

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3000 Marcus Avenue, Suite 2E03
Lake Success, New York 11042

BY: CHARLES HORN, ESQ.

ALSO PRESENT:

PHIL GLAUBERSON, Videographer

1 Albert Alishayev
2 providing compound medications about a year
3 ago?

4 A The reason why I'm sitting
5 here today.

6 Q What does that mean?

7 A Because I got sued for it.

8 Q And that's why you stopped
9 doing compound medications?

10 A Right. And -- (indicating).

11 Q Prior to about a year ago,
12 between August -- between August 2013 and
13 about a year ago, when you stopped doing
14 compound medications, what portion of 21st
15 Century's business was compound
16 medications?

17 A Very little, none, maybe,
18 2 percent.

19 Q And that's 2 percent based on
20 what; based on volume of prescriptions,
21 based on dollar value of prescriptions,
22 based on what?

23 A Based on referrals.

24 Q Based on the number of
25 patients?

1 Albert Alishayev

2 A Yeah.

3 Q Okay. How about if we
4 consider it based on the dollar value of
5 prescriptions, between what -- what is the
6 relative value of compounds versus the
7 other services that 21st Century was doing,
8 how does it compare?

9 A I don't know.

10 Q Okay. How about the profit
11 margin, what is the profit margin on
12 compound medications?

13 A Significant.

14 Q Approximately, what is it?

15 A Depends.

16 Q Do you have any idea what it
17 is?

18 A No, I got to look at it first.
19 Each one varies.

20 Q Okay. How does the profit
21 margin on compound medications compare to
22 the other businesses of 21st Century?

23 A I'm not sure about that.

24 Q Well, was it the largest
25 profit margin of any -- of 21st Century's

1 Albert Alishayev

2 lines of business?

3 A That's not true.

4 Q Well, that's my question --

5 I'm asking it as a question?

6 A Yeah.

7 Q I'm not making a statement.

8 A No.

9 Q What was it?

10 No, it wasn't?

11 A No, it wasn't.

12 Q What line of business was the
13 most profitable for 21st Century?

14 A It was tablets, it was
15 patches, it was a lot -- a lot of stuff.

16 Q So your testimony is tablets
17 and patches were --

18 A Also profitable.

19 Q Okay. The profit margin on
20 tablets and patches was higher than the
21 profit margin on compound medications?

22 A No, could be the same.

23 Q Could be the same?

24 A Or even more.

25 Q Well, which is it?

1 Albert Alishayev

2 A Could be both.

3 Q Is it the same or more --

4 A Because it's different --

5 different kinds of medications. There's a

6 lot of medications. There are some

7 medication that are high in fee schedule,

8 there are some medication with low fee

9 schedule. Some medication were --

10 overpassed the compounding, some won't.

11 Q Okay. Well, so then the
12 medication -- during the period of time
13 you're doing compounds, the medications on
14 which there was the highest profit margin,
15 sounds like included patches, some tablets,
16 and compounds; is that correct?

17 A Correct.

18 Q Okay. And I think I asked you
19 this, but I'm not sure.

20 You don't know the profit
21 margin on compounds; is that correct?

22 A It varies.

23 Q Okay. What does it vary
24 between?

25 A Depends on the compound and

1 Albert Alishayev

2 the amount of compound.

3 Q Okay. What's the low end and
4 the high end in terms of profit margin?

5 A I need to look at it.

6 Q Okay. All right. Could it be
7 as high as 50 percent?

8 A Maybe.

9 Q Could it be as high as
10 80 percent?

11 A Maybe.

12 Q Could it be as high as
13 90 percent?

14 A Yes.

15 Q Okay. Were there any patches
16 that you could get 90 percent profit margin
17 on?

18 A Maybe.

19 Q Which ones?

20 A Varies, different kinds.

21 Q Well, can you tell me one?

22 A There's -- there's a lot of
23 patches, but I can't tell you if it's
24 90 percent or 100 percent or 20 percent. I
25 can just name you the patches.

1 Albert Alishayev

2 Q What was your deal? What was
3 the -- what were the terms of your
4 arrangement with a marketer?

5 A Well, they would have to bring
6 in work, introduce me to doctors, dinners,
7 lunches.

8 Q And in exchange for that, you
9 would pay them?

10 A Right.

11 Q And how would you pay them?
12 How would the --

13 A Flat fee, 5,000 I would start
14 them off, sometimes two, three.

15 Q Sometimes two, three?

16 A Two or 3,000, it depends.

17 Q So there would be a flat fee
18 per month, correct?

19 A Yeah.

20 Q Is that right?

21 A Correct.

22 Q And the marketers were
23 expected to connect you with doctors; is
24 that correct?

25 A Right.

1 Albert Alishayev

2 Q Right?

3 A Correct.

4 Q And how would the performance
5 of a marketer be evaluated?

6 A I would ask who are the
7 doctors and run reports and see if they're
8 real or not because some of them are just,
9 you know, they just talk, say I know this
10 guy, that guy, and at the end of the month,
11 there's nothing coming in.

12 This is why I have a probation
13 period, three months period. If I don't see
14 anything coming in, you're out.

15 Q So did you have a three-month
16 probation period with every marketer that
17 you worked with?

18 A Yeah.

19 Q And so what happens is, if I
20 understand right, the first time you sit
21 down with a marketer, the marketer says
22 these are the doctors that I can connect
23 you with, gives you a list of names of
24 doctors, right?

25 A Right.

1 Albert Alishayev

2 Q All right. When the marketer
3 provides you with the names of the doctors,
4 is that in writing or oral?

5 A Oral.

6 Q Okay. Is it ever in writing?

7 A Sometimes writing, yeah.

8 Q Okay. And then during the
9 probationary period, you would go back and
10 look at the list that had been provided by
11 the marketer to see whether prescriptions
12 came in from those doctors, correct?

13 A Some of the -- sometimes I
14 would already have doctors in the system
15 sending work and I would see if there's any
16 change.

17 MR. HORN: Just need a quick
18 break.

19 MR. MARKS: Off the record.

20 THE VIDEOGRAPHER: Going off
21 the record. The time is 2:13 p.m.

22 (A short recess was taken.)

23 THE VIDEOGRAPHER: We're back
24 on the record. The time is 2:16 p.m.

25 Q So if you -- if you already

1 Albert Alishayev

2 had a doctor that you were working with, a
3 marketer brought to your attention, that
4 wouldn't be a reason for you not to have
5 that marketer go to that doctor, it would
6 just be, you would look at whether there
7 was an increase in prescriptions from that
8 doctor?

9 A Correct.

10 Q Okay. And if the marketer
11 were to tell you orally who the doctors
12 were they worked with, rather than giving
13 you a list, would you write down somewhere
14 the doctors that a particular marketer
15 worked with?

16 A Probably.

17 Q Okay. Well, you would have to
18 because you're going to keep track of how
19 those doctors performed to evaluate the
20 performance of the marketer, right?

21 MR. HORN: Objection.

22 A Sometimes.

23 Q Where would you write down or
24 where would you keep track of which doctors
25 went with which marketers?

1 Albert Alishayev

2 So I will run this report for
3 me to know what's going on. These are
4 pending, resubmitting, need insurance
5 information, so like this I have a report.

6 Q Okay. I understand that.

7 But what I'm trying to
8 understand is what -- what does the last
9 column -- what is the last column mean?
10 What is it? How do you -- what's the
11 calculation that produces the last column,
12 it's 25 percent of what?

13 A 25 percent out of the profit
14 and the cost and all the other stuff.

15 Q So you -- well, for example,
16 if we're looking at the first line, the
17 profit is 1134 -- \$1,134.90?

18 A One second. Okay.

19 Q All right. And are you
20 saying, then, that 278 is 25 percent of
21 that profit?

22 A Minus 200.

23 Q Right?

24 MR. HORN: Just let the record
25 reflect that the witness is using a

1 Albert Alishayev

2 calculator.

3 THE WITNESS: Is that okay?

4 MR. HORN: No, I just have to
5 let the record reflect. I know we
6 have it on video, but.

7 A Okay. Yeah, 25 percent, I
8 need to sustain my business.

9 Q The last column is 25 percent
10 of your profits?

11 A 25, 25 percent.

12 Q So you take the -- so what you
13 did is you take the profit column, and you
14 get 25 percent of that number and that's
15 the last column?

16 A Right.

17 Q Okay. And the reason you say
18 you want to know what 25 percent of your
19 profits are, you want to know what
20 25 percent of your profits are because
21 what?

22 A If it's feasible to even work
23 with this doctor, am I getting all my
24 paperwork. It says here status, denied,
25 30-day rules, for example, paid in full,

1 Albert Alishayev

2 resubmitted, needs AOP and HIPAA, so I
3 can't really --

4 Q Yeah, I -- what I'm trying to
5 understand is why do you need to divide
6 your profits essentially by four to do that
7 calculation to figure out whether this
8 doctor is profitable or not?

9 A To run this business, if I
10 want to continue working with this doctor.

11 Q I understand.

12 But explain to me, what's the
13 reason -- what's the reason you divide your
14 profits by four? Why do you need that --
15 why do you need a number?

16 Why do you need your profits
17 divided by four to figure out whether this
18 doctor is profitable?

19 A I need to see if I can
20 continue working with this doctor.

21 Q And the only way you can do
22 that is by dividing your profits by four?

23 A It could be by four, by five,
24 the least is 25 percent.

25 Q Well --

1 Albert Alishayev

2 A If I'm making less than that
3 based on -- because as you can see over
4 here, no insurance but the medication went
5 out. If it's all in yellow, then I'm good,
6 I don't want to work with this doctor.

7 Q Well, what you're -- but you
8 understand that 278, is not -- that's
9 not -- that doesn't mean that's a
10 25 percent profit margin, right, that's
11 just 25 percent of your total profits?

12 A Right.

13 Q All right. So what I'm trying
14 to understand is why would you divide your
15 profits by four to figure out whether it's
16 profitable? Why wouldn't you just look at
17 your total profits?

18 A Why not.

19 Q Is there any reason you can
20 think of other than "why not"?

21 A There's no reason, no.

22 Q Okay.

23 A It's my own report.

24 Q Okay.

25 A And then the statuses, that's

1 Albert Alishayev

2 what I need to obtain.

3 Q Okay.

4 A Is look at the status.

5 Q So what you do is -- so you
6 create this report, you figure out what
7 your profits are and you divide them by
8 four because that's a helpful way for you
9 to figure out if your business is
10 profitable, correct?

11 A Correct.

12 Q Okay. And the first line item
13 tells us that at least on this first
14 compound, you made a profit of \$1,334.85;
15 is that right, that was your profit, right?

16 A Right.

17 Q Okay. Now, why did 21st
18 Century share this report, reflecting its
19 profits, with the marketer?

20 A So I'm not really reflecting
21 the profits, I am status, that's what I
22 need.

23 Q Well --

24 A I need the status. I could
25 share whatever I want. I just want to look

1 Albert Alishayev

2 at the status, so I'm telling her to give
3 me the paperwork that I need because I
4 can't obtain it. I'm calling doctors, the
5 girls are not giving me whatever paperwork
6 I need. So I will send them back, this is
7 the report and get me insurance
8 information, verification requests, initial
9 reports, because I'm not getting paid.

10 Q Okay.

11 A And then I can see if I even
12 worth working with this doctor or with this
13 rep.

14 Q Okay. So your -- if I
15 understand what you're saying, your --
16 the -- the reason that you send this
17 report --

18 A Maybe I should have just
19 blanked that off, that's what you mean.

20 Q Well, I'm asking you, you tell
21 me.

22 A Right. You have a point
23 there.

24 Q I'm asking you, you tell me.

25 A Yeah.

1 Albert Alishayev

2 Q Why -- Exhibit 84, why did you
3 send a report -- why did you send -- why
4 did 21st Century send this report to the
5 marketer?

6 A To get me what I need on the
7 status.

8 Q Okay. So in other words,
9 you -- the reason you sent this report is
10 because there's a status column and you
11 wanted the marketer to follow up on the
12 status?

13 A Correct.

14 Q Okay.

15 A Because we cannot get in
16 contact with them.

17 Q Were you concerned that the
18 marketer was going to see how much money
19 you were making on your medications?

20 A No.

21 Q Didn't matter to you?

22 A No.

23 Q Okay. And that calculation in
24 the final column, did that have anything to
25 do with the marketer?

1 Albert Alishayev

2 A No.

3 Q Okay. And was Dr. Halioua a
4 doctor that Paul Dantes, Tops, Angela
5 Dantes and Dantes and Dantes connected 21st
6 Century with?

7 A Yeah.

8 Q Okay. So this -- and so was
9 this a doctor that was producing for 21st
10 Century?

11 A Yes.

12 Q Okay. And so did Tops and --
13 and the Dantes -- were they recognized for
14 the success of getting prescriptions for
15 Dr. Halioua?

16 A What do you mean?

17 Q Well, did they get any benefit
18 from Dr. Halioua writing a prescription?

19 A No, they got a flat fee.

20 Q They got no benefit
21 whatsoever?

22 A No.

23 Q Okay. Well, I take it, they
24 got to continue to work with 21st Century?

25 A No longer working with me, no.

1 Albert Alishayev

2 Q Why are they no longer working
3 with you?

4 A Because they're just not
5 working with me.

6 Q Why not?

7 A I don't know, just not
8 working.

9 Q Do you have any idea why
10 they're not working with you anymore?

11 A A lot of issues.

12 Q Well, like what?

13 A Not getting reports, just
14 they're -- their doctors are not giving me
15 what I need.

16 Q What do you mean they're not
17 giving you what you need?

18 A Verification reports, initial
19 reports, I'm not getting paid.

20 Q You're not getting -- the
21 doctors are no longer producing?

22 A Right.

23 Q So you stopped working with
24 them?

25 A Right.

1 Albert Alishayev

2 Q How is -- how is the document
3 that's attached to Exhibit 85 created,
4 what's the source of this document?

5 A One of the employees.

6 Q Okay. From what -- I take
7 it's from data that 21st Century maintains?

8 A If it's data maintained, no.

9 Q What --

10 A Maybe it was the only one that
11 was made, maybe one or two, that's it.

12 Q You're saying there's only one
13 or two documents like this exhibit?

14 A Yeah.

15 Q That exist, there aren't any
16 others?

17 A I don't think so.

18 Q Where did they get this
19 information from that created this
20 spreadsheet?

21 A From our system.

22 Q Okay. From what system?

23 A My Micro Merchant.

24 Q So Micro Merchant can generate
25 the data that's reflected in this report,

1 Albert Alishayev

2 correct?

3 A Not totally.

4 Q Well --

5 A This has to be done manually.

6 Q All right. Which of the
7 columns that are in Exhibit 85 have to be
8 created manually?

9 A Everything.

10 Q All of the columns on
11 Exhibit 85 have to be created manually?

12 A Yes.

13 Q So someone by hand typed out
14 Exhibit 85?

15 A Right.

16 Q This was not -- this was not a
17 spreadsheet that was generated by a
18 computer?

19 A No. My computer won't tell me
20 needs insurance information.

21 Q Okay. So you -- the testimony
22 is, is that, that this chart that's here
23 was typed up by hand?

24 A Yeah.

25 Q All right. The spreadsheet

1 Albert Alishayev
2 refers this, you see it says attachment dot
3 XLS? On the first -- first page.

4 Do you know what an XLS
5 extension means when it's connected to a
6 document name?

7 A No. What is it?

8 Q You don't know?

9 A No.

10 Q Okay.

11 A Excel?

12 Q Well, do you know whether it
13 means Excel or not?

14 A Yeah.

15 Q All right. If we take a look
16 at Exhibit 86, Exhibit 86 has one, two,
17 three, four, five, six, seven, eight Excel
18 spreadsheets attached to it, each with a
19 different doctors name.

20 Do you see that?

21 A Mm-hmm.

22 Q So in fact, there are eight
23 different reports?

24 A Okay.

25 Q For each of the different

1 Albert Alishayev

2 doctors, correct?

3 A Right.

4 Q All right. So does that alter
5 what you're saying, are there in fact
6 reports like these generated on a regular
7 basis for each of the doctors who worked
8 for 21st Century?

9 MR. HORN: Objection.

10 You can answer.

11 A No.

12 Q No. So are you saying the
13 ones that are Exhibit 85 and the ones that
14 are Exhibit 86, are the only ones that were
15 ever created by 21st Century that --

16 A Only the ones I'm concerned
17 about, yes.

18 Q Well, are they the only ones
19 that were ever created?

20 A I believe so, yes.

21 Q All right. Why were the ones
22 that were Exhibit 86 sent to Tops?

23 A Because he was representing
24 him.

25 Q So all of the doctors that are

1 Albert Alishayev

2 in Exhibit 86, these are doctors -- these
3 are all doctors that Tops connected you
4 with, correct?

5 A Hold on. (Perusing). Yes.

6 MR. HORN: Don't guess, if you
7 know.

8 A Yes.

9 Q All right. Is all of the
10 information that's in Exhibit 85 and
11 Exhibit 86, in the Micro Merchant system of
12 21st Century?

13 MR. HORN: I'm sorry?

14 A Sorry?

15 MR. HORN: Can you -- yeah, I
16 didn't.

17 Q Is all of the information that
18 is in the charts that are in Exhibit 85 and
19 86 in the Micro Merchant system of 21st
20 Century?

21 A I'm not understanding you.

22 Q Is all of the data, the
23 information that goes into the charts --

24 A You mean these pages, mm-hmm.

25 Q -- is that in the Micro

1 Albert Alishayev

2 Merchant system of 21st Century?

3 A Yeah.

4 MR. HORN: And the charts
5 we're talking about are 85 and 86.

6 Q And the charts which are
7 Exhibit 85 and 86?

8 A Yeah.

9 Q Okay.

10 A That's the only system we
11 have.

12 Some of these doctors don't
13 care if you get paid or not, they just send
14 you the script and --

15 MR. HORN: Don't keep talking,
16 just answer questions.

17 (One-page email chain
18 previously marked for identification
19 as Exhibit 67.)

20 Q Showing you what has been
21 previously marked as Deposition Exhibit
22 No. 67.

23 This is an email from Sabrina
24 Loduca, who we've previously indicated is
25 with Exit Marketing.

1 Albert Alishayev

2 through it in more detail, but I'm trying
3 to sort of be more efficient here; so is
4 that --

5 A Yeah.

6 Q All right. So do you know --
7 in other words, when I say that, you know,
8 he came in, you would have had a
9 probationary period with him, he would have
10 gotten through the probationary period, if
11 he was performing you would have continued
12 to work with him, if his doctors stopped
13 producing you would have stopped working
14 with him.

15 Is that a fair description?

16 A Correct.

17 Q So when I talk about your
18 relationship with marketers, and we're
19 going to talk about a few of them, that
20 relationship holds true with all the
21 marketers or networkers you worked with,
22 correct?

23 A Correct.

24 Q And Tommy Novakov as well as
25 all the others, true?

1 Albert Alishayev

2 A Yeah.

3 Q So with respect to Tommy
4 Novakov, do you know what doctors, clinics
5 or locations that Tommy Novakov dealt with?

6 A Don't.

7 Q Do you know anything about
8 Tommy Novakov's dealings, communications
9 with doctors, clinics or locations?

10 A No.

11 Q Are there any documents that
12 21st Century has that reflect that anything
13 Tommy Novakov did or Tommy Novakov Business
14 Services did for 21st Century?

15 A No.

16 Q Are you aware of whether Tommy
17 Novakov or Novakov Business Services paid
18 any kickbacks or had any other financial
19 arrangements that produced prescriptions?

20 A No.

21 Q Has the relationship with
22 Tommy Novakov and Novakov Business Services
23 ended?

24 A Yes.

25 Q Okay. Why did it end?

1 Albert Alishayev

2 A Just ended.

3 Q For any particular reason?

4 A Fired.

5 Q You fired him?

6 A Yeah.

7 Q Why?

8 A I don't know, just fired him.

9 Q Is it because --

10 A Because -- what are you trying
11 to say, go ahead?

12 Q Well, don't let me interrupt
13 you. Were you --

14 A You were going first.

15 Q Okay. Was it because the
16 doctors, clinics and locations that he
17 identified as the ones he was going to
18 connect you with were not producing?

19 A That's one of the issues.

20 Q Okay. Were there any other
21 issues that you remember?

22 A Family issues.

23 Q Family issues that he had?

24 A (Indicating.)

25 Q Were there family disputes

C E R T I F I C A T I O N

STATE OF NEW YORK)

: ss.:

COUNTY OF NEW YORK)

I, BRITTANY SALINE, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose testimony as herein set forth was duly sworn by me.

I further certify that I am not related to any of the parties to this action by blood or marriage, and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 27th day of September, 2019.



BRITTANY SALINE